

# Employee Plans News

Issue 2013-1, February 13, 2013

## Determination letters

- [2012 Cumulative List of Changes in Plan Qualification Requirements](#) - for determination letter applications submitted during Cycle C
- Cycle B closed January 31, 2013, and [Cycle C](#) opened February 1, 2013

## Audits and internal controls

- 403(b) plan audits – how the [new correction revenue procedure](#) affects current and future audits of 403(b) plans
- Voluntary Correction Program [Submission Kit for 403\(b\) plan sponsors](#) who missed the December 31, 2009, deadline to adopt a written plan
- SIMPLE IRA plan – [exclusive-plan requirement](#) explains when you can have a SIMPLE IRA plan after terminating another qualified plan

## Forms and compliance

- [Form 5500 proposed penalty notices eliminated](#), but IRS will continue to send CP 283, *Penalty Charged on Your 5500 Return*, if a Form 5500 is filed late or is incomplete
- [Form 1099-R Project](#) showed many filers aren't providing all of the required information for recipients
- [401\(k\) Excess Deferral Project](#) found errors in elective deferrals reported on Form W-2, Box 12

## For your clients

- [Retirement News for Employers](#) – let your clients know they can subscribe for free
- [Donated from your IRA or an IRA distribution in 2012?](#) – see if your donation can be a 2012 qualified charitable distribution
- [Traditional IRA vs. Roth IRA](#) chart
- 2013 federal income tax [withholding tables](#)

## Coming up

- [EPCRS phone forum](#) (February 21) – Revenue Procedure 2013-12 updates the IRS correction programs
- [Conferences calendar](#) and other [educational events](#)

## Spotlights

- [ERPAs have a new home](#) – The enrolled retirement plan agent program is now part of the IRS Return Preparer Office
- [Court ruling on return preparers](#) – read the IRS statement about the ruling
- [EP published guidance](#)
- [DOL Corner](#)
- [PBGIC Insights](#)

## Updates

- [Publication 560](#), *Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans)*
- [Publication 575](#), *Pension and Annuity Income*
- [Required minimum distribution FAQs](#) – new Q&A # 5 explains the requirements for pre-1987 contributions to a 403(b) plan

## How the New EPCRS Revenue Procedure Affects 403(b) Plan Audits

*Monika Templeman, Director of EP Examinations, responds to questions and offers insights on retirement plan topics uncovered during audits. You may provide feedback or suggest future topics by emailing her at: [RetirementPlanComments@irs.gov](mailto:RetirementPlanComments@irs.gov).*

Now that we've issued the new EPCRS [Revenue Procedure 2013-12](#), I'm sure you have questions about its effect on 403(b) plans. I've received many questions on how EP Exam will handle 403(b) written plan issues for plans currently under audit, or for new 403(b) plan audits starting before the revenue procedure's effective date of April 1, 2013.

### EP Exam and Rulings & Agreements work together

I want to assure the retirement plans community that EP R&A and Exam work holistically to help plans stay compliant, protect plan participants and provide practical solutions to correct plan mistakes.

### EPCRS changes for 403(b) plans

First, let's look at how the revenue procedure made changes for 403(b) plans. Generally, 403(b) plan sponsors can now correct:

- Most plan failures in the same way as qualified plans
- The failure to comply with the form and operational requirements of the 403(b) final regulations and other guidance
- The failure of not timely adopting a 403(b) written plan

Plans must use [Revenue Procedure 2008-50](#) definitions for 403(b) plan failures occurring prior to January 1, 2009.

### Interim sanction for no written plan prior to new EPCRS revenue procedure

IRS developed an interim approach for Audit Closing Agreement Program (Audit CAP) sanctions for 403(b) plan sponsors that failed to adopt a written plan prior to the issuance of the new EPCRS revenue procedure. In short, we used a Voluntary Correction Program (VCP) or "VC-plus" approach for 403(b) written plan failures. VC-plus means the sanction could be slightly higher than the regular VCP fee under the revenue procedure. Under this approach, sponsors who attempted in good faith to meet the written plan requirement had lower sanctions than those who didn't. Sanction amounts can also vary depending on whether the plan has met the requirements of [Notice 2009-3](#).

The interim sanction only applied to written plan failures. Agents combined the interim sanction with the regular Audit CAP sanctions for operational failures.

### Interim sanction for no written plan after new EPCRS revenue procedure

Now that we have the new revenue procedure, sponsors of 403(b) plans failing the written plan requirement should submit an application under the VCP. This approach is consistent with the IRS Correction Program's general principle of graduated fees and sanctions as an incentive to correct promptly.

### Current audits – sanction for no written plan

What about those 403(b) plans with a written plan failure that are currently under audit or those notified of an audit (which precludes a VCP submission)? IRS doesn't want to place plan sponsors in a "gotcha" situation. We have developed the following transitional plan relief:

- For 403(b) plan sponsors currently under audit or notified of an audit between now and April 1, 2013, IRS may allow plans correcting under Audit CAP the same compliance fee relief for failure to adopt a written plan that IRS affords to plans that submit for VCP under Revenue Procedure 2013-12 (considering all facts and circumstances).
- This relief is only for failure to adopt a 403(b) written plan and does not apply to operational errors.

If you have concerns or other scenarios not covered in this article, please email me at [RetirementPlanComments@irs.gov](mailto:RetirementPlanComments@irs.gov) and type — Monika's 403(b) Article" in the subject line.

## SIMPLE IRA Plans – Exclusive-Plan Requirement

**Our company has a calendar-year profit-sharing plan that we are terminating. The contribution for 2012 to the profit-sharing plan will be allocated as of December 31, 2012, but won't be deposited until 2013. We set up a SIMPLE IRA plan effective January 1, 2013. Do we meet the exclusive-plan requirement for SIMPLE IRA plans?**

Yes, your company may have a SIMPLE IRA plan for 2013 if you:

- met the other [SIMPLE IRA plan requirements](#) (for example, giving notice to your employees before their 60-day election period); and
- don't allocate any profit-sharing contribution to your employees for 2013. (Your profit-sharing contribution that will be allocated as of December 31, 2012, is a contribution for 2012, although it will be deposited in 2013.)

### Exclusive-plan requirement

Generally, an employer can't make SIMPLE IRA plan contributions for a calendar year if the employer (or its predecessor) has a qualified plan (other than the SIMPLE IRA plan) under which any employee:

- receives an allocation of contributions in a defined contribution plan, or
- has an increase in a benefit accrued in a defined benefit plan,

for a plan year of the qualified plan that begins or ends in that calendar year.

Internal Revenue Code Section [408\(p\)\(2\)\(D\)](#) contains both the exclusive-plan requirement and also exceptions for other plans in which:

- The only participants in the other plans are employees covered by a collective bargaining agreement (IRC Section 408(p)(2)(D))
- The other plans result from the employer's involvement in an acquisition, disposition or similar transaction (IRC Section 408(p)(10))

### Examples

#### Calendar-year plan made contributions for later year

If you make a contribution in 2013 that is based on employees' compensation for any part of 2013, then:

- your employees will receive an allocation of profit-sharing contributions for 2013, and
- you can't have a SIMPLE IRA plan for 2013.

#### Non-calendar-year plans

For non-calendar-year profit-sharing plans, you have to consider 2 years in determining whether employees receive an allocation of contributions. You can't have a SIMPLE IRA plan for either the 2012 or 2013 calendar year if:

- your profit-sharing plan year runs from July 1, 2012 - June 30, 2013, and
- any employee receives an allocation of contributions for the plan year ending June 30, 2013.

### Additional Resources

- [SIMPLE IRA plans](#)
- [Profit-sharing plans](#)
- [Notice 98-4](#), *SIMPLE IRA Plan Guidance*

## Form 5500 Proposed Notices Eliminated

Beginning January 1, 2013 the IRS will discontinue sending these notices:

- CP 213N, *Proposed Penalty Notice for Late Filing of Form 5500, Annual Return/Report of Employee Benefit Plan*
- CP 213I, *Proposed Penalty Notice for Incomplete Filing of Form 5500*

The IRS is eliminating proposed penalty notices under the Form 5500 program in an effort to reduce processing costs, reduce notices and comply with notice and systems standards.

Filers will continue to receive CP 283, *Penalty Charged on Your 5500 Return*, if a Form 5500 is filed late or is incomplete.

### Additional Resources:

[Form 5500 Corner](#)

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## Form 1099-R Errors

The [Employee Plans Compliance Unit](#) found errors on Form 1099-R, *Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.* during its [International Foreign Distribution project](#). The project focused on individuals living outside the United States or its territories who received retirement plan or IRA distributions before reaching age 59 1/2.

### Project results

Responses showed that Form 1099-R filers (payers, trustees or plan administrators) aren't fully completing the recipient's information on the form. Form 1099-R filers are required to provide the recipient's identification number, name, street address (including apartment number), city, state and zip code (or postal index numbers). This information is critical in locating U.S. individuals (citizens and resident aliens) living outside the U.S. or its territories. Form 1099-R filers can avoid these errors by carefully following the Form 1099-R [instructions](#).

### Form 1099-R reporting requirements

Generally, a Form 1099-R is issued to each person to whom a distribution of \$10 or more is made from pensions, annuities, profit-sharing and retirement plans (including section 457 government plans), IRAs, insurance contracts, etc.

The Form 1099-R issuer must:

- file the form with the IRS, and
- provide a copy to each individual who received a distribution.

The form must show both the gross and taxable amounts of the distribution and the total federal income tax withheld during the year. Generally, U.S. income tax must be withheld on distributions delivered outside the U.S. or its territories. However, a U.S. citizen or resident alien can choose not to have tax withheld if their address is in the U.S. or its territories.

### Penalties

IRS may assess penalties under Internal Revenue Code sections 6721 – 6723 when filers submit inaccurate or incomplete information reports.

### Fixing Form 1099-R errors

Filers can [fix errors](#) by issuing a corrected Form 1099-R. Make sure to correct it as soon as possible and file Copy A and Form 1096 (transmittal) with your IRS Service Center. Also, furnish statements to the recipients showing the correction.

### Treasury Inspector General for Tax Administration's report

The Treasury Inspector General for Tax Administration's [2011 report](#) noted the level of inaccuracies in

information returns, including Form 1099-R. The report stressed the importance of accurate information return reporting by third parties as a way of encouraging a high level of voluntary tax compliance.

The report further noted that information returns with inaccurate names and taxpayer identification numbers create opportunities for individuals to underreport income and avoid IRS scrutiny. Those individuals taking advantage of such opportunities can create an unfair burden on other taxpayers and diminish the public's respect for the tax system. This is important because the [tax gap](#) — the difference between what taxpayers should have paid and what they actually paid on a timely basis — was an estimated \$385 billion in 2006.

When a Form 1099-R issuer omits identifying information from any information return, it's more difficult for the IRS to conduct compliance checks and examinations. The report stated that, although the IRS is able to correct a large number of inaccuracies, many information reports go uncorrected hampering compliance efforts and undermining the basis of our voluntary tax system.

### **Contacting EPCU**

We'll post a summary of the International Foreign Distributions project to our Web page. If you have questions about how the [EPCU](#) International Foreign Distribution project relates to your retirement plan, [email](#) us and include - International Foreign Distributions" in the subject line.

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## **Form W-2 Errors Showing Excess Deferrals**

In its [401\(k\) Excess Deferral Project](#), the [Employee Plans Compliance Unit](#) found errors in elective deferrals reported in Box 12 of [Form W-2, Wage and Tax Statement](#). The project sampled employers who filed Forms W-2 that showed some employees had elective deferrals in excess of the [annual limit](#).

### **Project results**

Responses showed that 75% of the employers in the sample needed to correct their Forms W-2.

### **Form W-2, Box 12**

Employers must report 401(k) elective deferrals in Box 12 of the Form W-2, using the code "D."

### **Employer errors**

Employers incorrectly reported as 401(k) elective deferrals in Box 12:

- elective deferrals made to 403(b) or 457 plans, or
- other non-qualified amounts.

Employers also made errors in reporting Social Security wages and deferred compensation, and used incorrect codes. Form W-2 filers can avoid some of these errors by following the Form W-2 [instructions](#). To correct their previously filed Forms W-2, employers filed over 26,000 [Forms W-2C, Corrected Wage and Tax Statement](#). Because of our compliance contact, most of these employers became aware of software and data transmission problems when moving files back and forth with their third party administrator or payroll vendor and took action to fix those problems for future W-2 filings.

### **Fixing excess deferral errors**

When an employee's elective deferrals exceed the annual limit during a calendar year, the employee must include the excess amount in income for the year in which it was contributed to the plan. The employee is also taxed on the earnings on the excess elective deferrals in the year the plan distributes them. If the plan doesn't distribute the excess deferral by April 15 of following year, the excess is taxable in both the year deferred and the year distributed.

Some employers in the sample had already recognized employees who had made excess elective deferrals to their plan. They corrected this by returning the excess deferrals and issuing a [Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.](#) This form is generally filed for each person to whom a distribution of \$10 or more is made.

### Additional resources

- Get help on how to fix excess deferrals and prevent future mistakes in the IRS [401\(k\) Plan Fix-It Guide](#).
- Learn about correcting other plan errors using the [Employee Plans Compliance Resolution System](#).
- Read about [other Form W-2 errors](#) found in this project.

### Contacting EPCU

If you have questions about how this project relates to your retirement plan, [email](#) us and include “401(k) Excess Deferrals” in the subject line.

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## Donations From Your IRA or of Your IRA Distribution to a Qualified Charity in 2012

### Can I claim a donation from my IRA or of my IRA distribution to a qualified charity in 2012 as a qualified charitable distribution?

You can elect to treat the donation as a 2012 qualified charitable distribution (QCD) if:

- for the donation from your IRA, you:
  - made the donation when you were age 70½ or older, and
  - the donation was transferred directly from your IRA (other than an ongoing SEP or SIMPLE IRA) to the qualified charity;
- for the donation of your IRA distribution, you:
  - were age 70½ or older at the time of your IRA distribution,
  - received your IRA distribution in December 2012 from an IRA (other than an ongoing SEP or SIMPLE IRA), and
  - contributed the distribution in cash to a qualified charity.

See [Notice 2007-7](#) for additional information on QCDs, including the definition of ongoing SEP and SIMPLE IRAs.

### 2012 QCD reporting reminders

- Don't deduct as a charitable contribution any amount of a QCD you exclude from your gross income.
- Report your 2012 QCDs on your 2012 Form 1040.
- File a [2012 Form 8606](#), *Nondeductible IRAs* ([instructions](#)) with your return if your 2012 QCD was from a:
  - Roth IRA; or
  - a traditional IRA, in which you had basis, and you received a 2012 distribution from any traditional IRA other than the 2012 QCD.

### Additional Resources

- [Charitable Donations from IRAs for 2012 and 2013](#)

## Traditional and Roth IRAs

Traditional and Roth IRAs allow you to save money for retirement. This chart highlights some of their similarities and differences.

Features	Traditional IRA	Roth IRA
<b>Who can contribute?</b>	You can contribute if you (or your spouse if filing jointly) have <a href="#">taxable compensation</a> but not after you are age 70½ or older.	You can contribute at any age if you (or your spouse if filing jointly) have <a href="#">taxable compensation</a> and your modified adjusted gross income is below certain amounts (see <a href="#">2012</a> and <a href="#">2013</a> limits).
<b>Are my contributions deductible?</b>	You can deduct your contributions if you <a href="#">qualify</a> .	Your contributions aren't deductible.
<b>How much can I contribute?</b>	The most you can contribute to <b>all</b> of your traditional and Roth IRAs is the smaller of: <ul style="list-style-type: none"> <li>• for 2012, \$5,000, or \$6,000 if you're age 50 or older by the end of the year (\$5,500 or \$6,500 for 2013); or</li> <li>• your taxable compensation for the year.</li> </ul>	
<b>What is the deadline to make contributions?</b>	Your tax return filing deadline (not including extensions). For example, you have until April 15, 2013, to make your 2012 contribution.	
<b>When can I withdraw money?</b>	You can withdraw money anytime.	
<b>Do I have to take required minimum distributions?</b>	You must start taking distributions by April 1 following the year in which you turn age 70½ and by December 31 of later years.	Not required if you are the original owner.
<b>Are my withdrawals and distributions taxable?</b>	Any deductible contributions and earnings you withdraw or that are distributed from your traditional IRA are taxable. Also, if you are under age 59 ½ you may have to pay an additional 10% tax for early withdrawals unless you qualify for an <a href="#">exception</a> .	None if it's a <a href="#">qualified distribution</a> (or a withdrawal that is a qualified distribution). Otherwise, part of the distribution or withdrawal may be <a href="#">taxable</a> . If you are under age 59 ½, you may also have to pay an additional 10% tax for early withdrawals unless you qualify for an <a href="#">exception</a> .

### Additional Resources:

- [Publication 590, Individual Retirement Arrangements \(IRAs\)](#)
- [Individual Retirement Arrangements](#) Web pages
- [Required Minimum Distributions](#) Web pages
- FAQs: [Traditional and Roth IRAs](#)



## ERPAs Have a New Home

The enrolled retirement plan agent (ERPA) program is now part of the IRS Return Preparer Office (RPO). RPO will manage all aspects of the program, including registration, renewal, the ERPA Special Enrollment Examination contract, and web content. The move was part of a larger consolidation of all IRS tax professional designations, including enrolled agents, enrolled actuaries, and registered tax return preparers.

Update your bookmarks! All ERPA web content is now available at [www.irs.gov/erpa](http://www.irs.gov/erpa). Check out our updated pages for all your registration and renewal needs.

What can you expect? All procedures regarding testing, registration, and renewal remain the same. RPO now manages all IRS approved continuing education providers. Check out the [public listing](#) to find a provider near you.

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## DOL Corner

The Department of Labor's Employee Benefits Security Administration (DOL/EBSA) announced new guidance as featured below. You can subscribe to [DOL/EBSA's](#) homepage for updates.

### Amendments to abandoned plan program

On December 12, 2012, DOL/EBSA published in the Federal Register a [proposed rule](#) and related [class exemption](#) that will make it easier for Chapter 7 bankruptcy trustees to distribute assets from bankrupt companies' retirement plans. The proposal would allow such trustees to use EBSA's existing Abandoned Plan Program to terminate, wind up and distribute benefits from such plans.

The existing Abandoned Plan Program provides streamlined termination and distribution procedures for abandoned individual account plans, including 401(k) plans, under which benefits may be distributed in a manner that can substantially reduce fees charged to participants' accounts for, among other things, annual reporting, legal compliance and other administrative services, including termination costs. By making this streamlined process available to Chapter 7 bankruptcy trustees, the time and resources required to "wind up" a bankrupt company's retirement plan can be significantly reduced.

Under amendments in 2005 to federal bankruptcy law, if a company in liquidation administered an individual account plan, the company's Chapter 7 bankruptcy trustee must perform those functions. The Abandoned Plan Program, established in 2006, provides specific guidance on when a plan may be considered abandoned, who may make that determination, and exactly how to terminate the affairs of the plan and make benefit distributions. The program also limits potential fiduciary liability of financial institutions that step in to terminate and wind up plans that have been abandoned by their sponsors.

### 2012 Form 5500 Annual Report

On December 4, 2012, DOL/EBSA, the IRS and the Pension Benefit Guaranty Corporation released advance [informational copies](#) of the 2012 Form 5500 annual return/report and related instructions. These copies are for informational purposes only and cannot be used to file.

Pension and welfare benefit plans that are required to file electronically an annual return/report regarding their financial conditions, investments and operations each year generally satisfy that requirement by filing the Form 5500 or Form 5500-SF and any required attachments.

Modifications to the Form 5500 and Form 5500-SF for plan year 2012 are described under "Changes to Note" in the 2012 instructions, including:

- Optional Paid Preparer Information
- Optional Trust Information in the Schedule H and Schedule I



- Schedule SB instructions updated to advise that additional detail is requested for the prior year's excess contributions to be added to the prefunding balance
- Multiemployer actuarial information reporting clarified for changes in adjustable benefits and for amortization charges under the funding standard account statement for this plan year

The official electronic versions for filing are now available on the [EFAST2](#) website.

### Compliance guidance for those impacted by Hurricane Sandy

On November 20, 2012, DOL/EBSA provided [guidance](#) about compliance with employee benefit plan rules for those adversely impacted by Hurricane Sandy.

The guidance applies to employee benefit plans, plan sponsors, as well as service providers to such employers, located on October 26, 2012, in one of the counties or Tribal Nations that have been identified as covered disaster areas because of the devastation caused by Hurricane Sandy. Covered disaster areas are identified as federally declared disaster areas in the IRS issued [News Releases](#) for Victims of Hurricane.

The relief provided in this guidance is in addition to the Form 5500 Annual Return/Report filing relief already provided by the IRS. The relief provided in this guidance includes verification procedures for plan loans and distributions, participant contributions and loan repayments, blackout notices, and ERISA group health plans.

### Outreach and education

For notice of upcoming events as they are scheduled, subscribe to [DOL/EBSA's](#) website homepage. DOL/EBSA also conducts seminars for small businesses sponsoring health benefits plans. Information on these events is also available on DOL/EBSA's homepage.

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## PBGC Insights

**2013 premium filings:** You may file both estimated flat-rate filings and the comprehensive filings for plan years beginning in 2013 using My Plan Administration Account (My PAA), our online application for premium filers. Here are some additional online tools e-filers may find useful:

- Information about how to e-file, including demos and frequently asked questions: [Online Premium Filing with My PAA](#).
- 2013 premium payment instructions (including illustrative forms): [Premium Payment Instructions and Addresses](#).
- [See page 2 of the instructions](#) for "What's New" for premium filings for plan years beginning in 2013. For example, the per-participant flat-rate premium is \$42.00 for single-employer plans and \$12.00 for multiemployer plans.

**Expected retirement age update:** On November 30, 2012, PBGC published a [final rule](#) amending its valuation regulation by substituting a new table for selecting a retirement rate category. The new table applies to any plan being terminated either in a distress termination or involuntarily by the PBGC with a valuation date falling in 2013.

**2013 maximum guarantee:** On November 27, 2012, we updated the [Maximum Monthly Guarantee Tables](#) for 2013. The maximum monthly benefit amount that can be guaranteed for 2013 is \$4,789.77 (as compared with \$4,653.41 for 2012).

**Benefit restrictions - present value of PBGC maximum guarantee:** On November 21, 2012, PBGC posted a [table](#) showing the applicable present values for 2013 plan years. For more information, see [Technical Update 07-04](#).